

CALIFORNIA STATE TEACHERS' RETIREMENT BOARD

INVESTMENT COMMITTEE

SUBJECT: Quarterly Litigation Report

ITEM NUMBER: 15

ATTACHMENT(S): 1

ACTION: _____

DATE OF MEETING: April 7, 1999

INFORMATION: X

PRESENTER(S): Mr. Waddell

The Quarterly Litigation Report has been prepared as directed by the Investment Committee.
Non-investment litigation will be reported in the Retirement Board meeting.

STRS QUARTERLY LITIGATION REPORT
April 1999

PROPERTY ADVISOR: CB Richard Ellis

Wilshire Landmark I

Wang v. STRS (1994) STRS Counsel: Haight, Brown, & Bonesteel. Legal counsel retained by insurance company. Alleged elevator injury at property. Attorneys of insurance company have responded to complaint **and proceeding with preparation for trial.**

Northrop Gruman Plaza

Sanders v. STRS, et al. (1994) STRS Counsel: Haight, Brown and Bonesteel. Alleged injury as a result of elevator malfunction. Insurance Company has retained counsel on behalf of STRS. Response to complaint has been filed. Plaintiff's deposition taken March 2, 1995. Millar Elevator (cross-defendant) has filed a governmental claim against STRS with the Board of Control. Upon rejection Millar Elevator will file a cross-complaint against STRS. Court has ordered mediation set before April 1996. Millar Elevator has accepted STRS tender of defense and agreed to indemnify STRS. Trial presently set in Santa Monica Superior Court.

STRS v. Beverly Hills Management (1997) STRS Counsel: Cox, Castle & Nicholson. Landlord initiated action due to nonpayment of rent by tenant. Tenant counter-claimed that odor from other tenant's kitchen interfered with tenancy. Tenant abandoned premises and Advisor is recommending that STRS write-off the amount owing due to inability to collect from tenant. **Case closed.**

STRS v. Pearlman Group (1998) STRS Counsel: Cox, Castle & Nicholson. Tenant breached lease by non-payment of rent. Unlawful detainer action initiated by STRS attorneys resulting in tenant and sub-tenants vacating building. Security deposit applied to past due rent, advisor has reviewed availability of assets of tenant **and determined no assets available, recommends write-off of amount owing. Case closed.**

STRS v. Sun-Rise Tae Kwan Do (1997) STRS Counsel: Cox, Castle & Nicholson. Tenant breached lease resulting in a service by landlord of a Notice to Pay or Quit on tenant. Tenant has filed a Chapter 7 Bankruptcy. Legal counsel has filed proof of claim on behalf of STRS. **No further legal action to be taken. Case closed.**

Chudnousky v. STRS (1995) STRS Counsel: Wilner, Klein & Siegal. Insurance carrier retained counsel on behalf of STRS. Plaintiff alleges she fell over a brick in plaza and broke her hip. Claim being processed through insurance carrier. Lawsuit was filed and served on STRS in January 1997. Court has requested parties enter into mediation which is scheduled for October 8, 1997. Plaintiff has offered to settle case for \$75,000. The mediation hearing resulted in a \$20,000 settlement offer to plaintiff to settle case.

STRS QUARTERLY LITIGATION REPORT
April 1999

STRS v. Northrop Gruman (1998) STRS Counsel: None assigned at this date: Claim made by advisor to tenant for common billing for electricity. Tenant and advisor are working on resolution of issue without litigation and claim by Landlord may be offset by outstanding credits accumulated by tenant.

STRS v. Mercantile National Bank (1998); STRS Counsel: Cox, Castle & Nicholson. Claim made by landlord to tenant for deferred billing of electricity which tenant has disputed. Advisor and tenant attempting to resolve issue without litigation.

Rancho Pacifica

STRS v. Nittok Tile (1997) STRS Counsel: Cox, Castle & Nicholson. Tenant has abandoned space and filed bankruptcy. STRS has filed a claim with the bankruptcy trustee through its counsel. **Advisor will monitor bankruptcy claim.**

STRS v. Specialized Testing (1998) STRS Counsel: Cox, Castle & Nicholson. Tenant was under an agreement as a result of a prior default which included a stipulated judgment. Tenant has again defaulted and the stipulated judgment enforced removing tenant from possession of the premises. Landlord has obtained possession of the premises. Review of assets of tenant being conducted to determine if collection action warranted. Action has been initiated to collect from the guarantors under the lease.

* **STRS v. Waldron & Co. (1997)** STRS Counsel: Cox, Castle & Nicholson. Tenant was sued by the Securities and Exchange Commission in September 1998 and ceased to occupying the property. STRS has retained possession of the property and applied the security deposit to arrearage. Advisor will assess availability of tenants assets to determine if STRS should pursue judgement.

* **STRS v. Virtual Stock (1999)** STRS Counsel: Cox, Castle & Nicholson. Tenant has breached lease via non-payment and vacated property. Lease expires March, 1999. Advisor will assess assets of tenant to determine if STRS should pursue litigation.

STRS v. B & J Medical Lab (1998) STRS Counsel: Cox, Castle & Nicholson. Tenant defaulted on lease and has vacated property. Tenant and landlord have reached a settlement agreement. Case closed.

Moscovitch v. STRS, et al. (1997) No STRS Counsel at this time. Tenant alleges a slip and fall in property claiming floors were over-waxed. Plaintiff has requested payment of \$500.00 for release of claims, the payment of which has been denied. **Plaintiff has failed to pursue claim and matter is deemed closed. Case closed.**

STRS QUARTERLY LITIGATION REPORT

April 1999

9720 Wilshire

STRS v. Inman, Weisz & Stein. (1998); STRS Counsel: Cox, Castle & Nicholson. Tenant has vacated space and is presently in default on rent due and owing under their lease. Advisor will seek judgment and pursue collection against tenant.

PROPERTY ADVISOR: Lend Lease (formerly ERE Yarmouth)

Anaheim Plaza Shopping Center

In Re Clothestime (1995) STRS Counsel: Cox, Castle & Nicholson. Tenant filed bankruptcy on December 9, 1995 but continues to make payment to STRS and occupy space.

* **STRS v. El Pollo Loco (1999)** STRS Counsel: Cox, Castle & Nicholson. Negotiation to enter into lease with tenant terminated when they refused in bad faith to sign corporate lease. Attempts will be made to seek reimbursement of costs and legal fees prior to litigation.

STRS v. Chubby's Diner (1997): STRS Counsel: Cox, Castle & Nicholson. Tenant in default under Lease, has vacated premises and filed Bankruptcy. STRS Counsel has been granted relief from the Bankruptcy Court to proceed with Unlawful Detainer action. Default judgment obtained against defendant; **and have recorded judgements in multiple counties in hopes of securing payment. Case closed.**

STRS v. Baskin Robbins (1997): STRS Counsel: Cox, Castle & Nicholson. Tenant has defaulted under lease via non-payment of rent. Unlawful Detainer action was commenced against tenant to regain possession and seek monetary judgment against tenant.

STRS v. Kenny Rogers Roasters (1997): Cox, Castle & Nicholson. Tenant is in default of Lease for non-payment of CAM charges and rent. Legal action has been initiated to regain possession of the premises and will seek monetary judgment against franchisee and guarantor Roasters Corporation. Tenant has filed for Bankruptcy protection and a proof of claim has been filed on behalf of STRS in the bankruptcy case. **Advisor has been instructed to perform asset search on behalf of guarantor to evaluate seeking judgement against them.**

Pacific Financial Plaza

* **STRS v. Cal Fed (1999)** STRS Counsel: Voss, Cook & Theil. Litigation involves a master lease with tenant Cal-Fed who has claimed that lease was terminated due to actions of landlord. Space had been sub-leased by Cal-Fed to two (2) sub-tenants with out the permission of the landlord as required by the terms of the lease. Sub-tenants continue to pay rent into an escrow account while litigation is ongoing. STRS will seek declaratory relief judgement against Cal-Fed for determination of validity of lease and monetary judgement for damages suffered by STRS.

STRS QUARTERLY LITIGATION REPORT
April 1999

Davies Pacific Center

STRS v. Legacy Mortgage (1997) STRS Counsel; Bendet, Fidell, Sakai & Lee. Tenant breached lease through non-payment of rent. Complaint for possession and monetary judgment has been filed. Stipulated judgment for Writ of Possession and monetary judgment (\$76,987.00) has been signed by tenant. Tenant vacated building and made \$3,000 payment on judgment. Advisor will continue to execute judgment against tenant's assets. **Tenant may have filed Bankruptcy to dismiss judgements, information being confirmed by counsel.**

Joe Pacific Shoe Repairs v. STRS, et al. (1997) STRS Counsel: to be determined - appointed by insurance company. Plaintiff alleges breach of lease commitment by property manager of STRS. STRS will be indemnified for all costs and judgments by insurance carrier of leasing agent. Case has been scheduled for trial and depositions and discovery continuing in preparation for trial. **Case is being monitored by STRS counsel: Bendet, Fidell et al. with fees paid by the insurance carrier.**

Pan Am Building

STRS v. Classic Creations (1998) STRS Counsel: Bendet, Fidell, Sakai & Lee. Tenant defaulted on Lease via non-payment. Unlawful Detainer initiated and tenant has paid all arrearages and reimbursed STRS for all attorneys' fees and costs. **Case closed.**

STRS v. Ocean Express (1998) STRS Counsel: Bendet, Fidell, Sakai & Lee. Tenant defaulted on Lease via non-payment. Unlawful Detainer filed resulting in STRS regaining possession of space. **Judgement for monetary damages obtained. Tenant has no assets to lien, advisor recommends write-off. Case closed.**

1120 19th Street

In Re Thomas Enterprises, Inc. (1992) STRS Counsel: Hazel & Thomas, P.C. Tenant bankruptcy. Relief sought: \$70,000. Chapter 11, issue over 4 parking spaces which tenant gave up with lease for Suite 700. Creditors objected to disclosure statement. Once disclosure statement revised and approved, plan will be circulated for creditors approval.

University Office Park

* **Washington v. STRS (1999)** STRS Counsel: Law Office of Daniel Hirshik. Plaintiff claims a slip and fall injury in the parking lot. Matter has been sent to law firm retained by the insurance carrier (Royal Insurance) for representation in defense of STRS.

Southrail Business Park

STRS v. Song dba Woo-Ri (1997) STRS Counsel: Procopio, Cory, Hargraves & Sabitch. Tenant has defaulted under Lease via nonpayment of rent. Tenant has vacated space and filed for

STRS QUARTERLY LITIGATION REPORT

April 1999

Bankruptcy. Collection of arrearage unlikely but advisor will file claim on behalf of STRS in Bankruptcy proceeding.

STRS v. Dundee (1998) STRS Counsel: Procopio, Cory, Hargraves & Sabitch. Tenant has defaulted under lease. Judgment obtained for money and possession. Possession of space has been regained by STRS. Advisor will attempt to collect money judgment from tenant.

Center Pointe of Woodridge

* **County of Du Page v. STRS (1999)** STRS Counsel: Schenk, Annes, Brookman & Tepper. County of Du Page has filed a condemnation action for 350 sq. feet of frontage on a portion of shopping center for expansion of street. Parties have agreed on the compensation for the space and the matter will be settled through stipulation.

Pacific North West Group B-B-1

* **Market Center Management (MCM) v. PN WG B/B-1 et al. (1999)** STRS Counsel: Pillsbury, Madison & Sutro. MCM is seeking specific performance of a sale of the property known as the Marts under an unsigned purchase and sale agreement. Responses have been filed on behalf of PERS and STRS as joint defendants and discovery is ongoing. Defense Counsel is reviewing voluminous records on the property to respond to discovery requests. A joint venture meeting between the joint venturers (PERS, STRS and Tramell Crowe) has been scheduled in late March to discuss the litigation.

Riverbend

Elbe v. STRS (1994) STRS Counsel: Delaney, Zemetis, Donahue & Durham (appointed by insurance company) Alleged slip and fall by an employee of tenant. The complaint was served in July, 1996. STRS Counsel has filed answer and cross-complaint against a cleaning company. **Discovery is proceeding with deposition of plaintiff completed. Counsel has reviewed deposition as favorable to STRS, matter proceeding to trial**

Santa Clara Industrial

Lopez v. STRS, et al. (1993) STRS Counsel: Jones, LaMore, Brazier and Riddle (retained and paid by insurance company). Personal injury action for alleged slip and fall due to leak on roof. Matter being handled by insurance carrier.

Quarry Shopping Center

STRS v. Partyland (1997) STRS Counsel: Schenk, Annes, Brookmen & Tepper. Tenant has requested early termination of lease which landlord has denied (lease language does not allow an early termination). Attorneys are negotiating settlement to avoid litigation.

STRS QUARTERLY LITIGATION REPORT
April 1999

Non-Real Estate Investment Related Litigation

Integra Realty Resources, etc. and et al. v. Fidelity Capital Appreciation Fund, et al.

U.S. Bankruptcy Court of Colorado

Plaintiffs' Counsel:

STRS Counsel: Irene Tamura, Deputy Attorney General

This is a class action, of which STRS is a likely member, filed against several hundred shareholders of Integra, a company now in Bankruptcy. STRS owned shares of Integra through its Extended Market Fund. Through a series of complex mergers, buyouts culminating on January 3, 1989, in a spinoff by Integra of the stock it owned in a subsidiary, STRS became the owner of 13,649 shares of ShowBiz Pizza with an assigned value of \$156,000. (The original cost of the Integra shares which were replaced by the ShowBiz shares was \$267,000. Thus, STRS suffered a paper loss of approximately \$111,000.) This action, brought by the trustee for several creditors of Integra, maintains that the spinoff was a conveyance in fraud of the creditors. The payer is to reverse the transaction or to reimburse Integra for the value of the fraudulently conveyed asset together with attorneys' fees. As a result of a motion brought by a majority shareholder, the Bankruptcy Court has appointed counsel for Fidelity Capital Appreciation Fund who shall provide a defense on behalf of the class of defendant's.

There is presently before the court a settlement offer which will be voted on by the class of defendants of which STRS is a member and subject to court approval.

CalMicro Devices Litigation (1995) STRS Counsel: Hogan & Hartson by Joseph Hassett. The federal trial court accepted the settlement proposed by the parties, which resulted in a partial recovery of damages and the savings of many millions of dollars in attorneys' fees. The former CEO of the company has been convicted of securities fraud and was ordered on December 8, 1998 to make partial restitution to the class by the conveyance of company stock valued at approximately \$3.75 million and by the assignment to the class of the \$2 million in proceeds of officers and directors insurance. This order is subject to appeal.

NASDAQ Litigation (1997) STRS Counsel: Office of the Attorney General. This is a federal class action lawsuit originally filed in 1995. The case as currently filed alleges that the NASDAQ market makers—large brokerage houses—conspired to maintain an overly wide “spread” in the transaction costs associated with the trading of shares of stocks on the NASDAQ market. The spread in the transaction costs were limited to half points rather than quarter points, a practice that resulted in higher costs. The practice has been referred to as a form of price rigging and occurred from May 1989 to May 1994.

On November 9, 1998, a class-action settlement of \$1.03 billion was approved by the Federal district court. As a member of the class, STRS will receive a portion of the proceeds from the settlement. The timing and amount of payment are dependent upon the resolution of an appeal of the settlement and certain administrative issues.

STRS QUARTERLY LITIGATION REPORT
April 1999

County of Los Angeles v. STRS (1998) STRS Counsel: STRS Legal Office, Douglas C. Wills. County of Los Angeles approached STRS through its advisor CB Richard Ellis to purchase a small tract of land (1,335 square feet) which was needed by the county to a roadway improvement project known as the Alameda Corridor project. The parties could not agree on the representations and warranties relating to environmental issues and STRS suggested the parcel be acquired through an Eminent Domain action. Parties have worked out a Stipulated Judgment in the action with payment to STRS in the amount recommended by its advisor under the purchase and sale agreement. **Documents have been signed and are being recorded to close transactions.**

Note: * Indicates new litigation cases added to Quarterly Report.